IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 485 OF 2005

Christian Mathew Gonsalves ...Appellant

Versus

The State of Maharashtra ...Respondent

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Mr. Nitin Sejpal with Ms. Pooja Bhojane, Advocates for Appellant

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 9TH JUNE, 2005

P. C.:-

1. This appeal has been preferred by the appellant original accused Cristian Gonsalves against the judgment and order dated 4.5.2005 passed by the Additional Sessions Judge for Greater Bombay in Sessions Case No. 46 of 2002. By the said judgment and order, the learned Sessions Judge convicted the appellant under section 304 Part-II and sentenced him to imprisonment of eight years.

2. It is the prosecution case that the appellant during a quarrel gave a blow with a knife to his brother Rozario Gonsalves. The wife of the Rozario Gonsalves i.e. Mrs. Lina Gonsalves is present

before this Court and she also filed an affidavit. The said affidavit is taken onrecord and marked as Exhibit ‘X’ for identification. Mrs. Lina Gonsalves has stated that she and her minor daughter are residing with the appellant and the appellant is taking care of her and her daughter. She has further stated that she and her daughter are dependant upon the appellant for their livelihood. Thus, she has prayed that a lenient view may be taken and the sentence awarded to the appellant may be reduced to the period undergone by him. I have verified from Mrs. Lina Gonsalves that the affidavit is genuine and voluntary. In view of this fact, the learned A.P.P. states that he has no objection to the sentence being reduced to the period undergone by the appellant.

3. Considering the fact that this appeal is being argued only on the point of sentence and not on merits, hence, by consent this appeal is being disposed of at the admission stage itself.

4. Looking to the facts and circumstances of this case, I am inclined to reduce the sentence of imprisonment imposed on the appellant under Section 304 part-II of I.P.C. to the period undergone by the appellant.

5. In the result, the conviction imposed on the appellant by the learned Sessions Judge, Greater Bombay, is maintained. However, period of imprisonment is reduced to the period undergone by the appellant.

6. On fine amount of Rs.5,000/- being paid by the appellant before the trial Court, the appellant be released, if not required in any other case.

7. Criminal Appeal is partly allowed.

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